

STATEMENT OF CLAIMS STATUS

Claims 1-3 and 6-11 are pending.

Claims 1-3 and 6-11 are rejected.

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SUMMARY OF RESPONSE

Detailed Action

Claim Rejections -35 USC § 103

1. The Examiner states: "Claims 1-2 and 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yavitz et al. U.S. Patent No. 6,312,450 in view of Rodgers et al. U.S. Patent No. 6,455,501.

Yavitz et al. disclose a system and method for improving the texture and appearance of patient's skin, the method comprising the steps of: treating a subsurface layer of the skin with a source of energy sufficient to cause stimulation of collagen biosynthesis without thermal damage to the epidermis (see the abstract; col. 2, line 66 to col. 3, line 10; col. 4, lines 62-66; and col. 6, lines 3-5); and applying to the skin a light transport modifier, which in turn helps post treatment healing of tissue (see col. 5, lines 16-19). As to claim 3, Examiner notes that the method for periodic treatment over a given duration, such as days, weeks or months is well known in the medical art. However, although Yavitz et al. emphasize the importance of shortened healing time, they do not particularly teach the use of a wound healing composition as claimed. Rodgers et al. teach an alternative skin treatment in which a wound healing composition is used. Thus, it would have been obvious to one skilled in the art at the time of the applicant's invention to modify Yavitz et al. in view of Rodgers et al. and use a wound healing composition in order prevent infection and substantially reduce healing time of the tissue being treated."

2. The Examiner states: "Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yavitz et al. in view of Rodgers et al. as applied to claims 1-3 and 7-11 above, and further in view of O'Donnell, Jr. U.S. Patent 6,106,514.

Neither Yavitz et al. nor Rodgers et al. teach the use of mechanical energy to provide the treatment. O'Donnell, Jr. discloses apparatus and method for treating subsurface layer of skin,

the method comprising the steps of applying mechanical energy to tissue being treated. Hence, at the time of the applicant's invention, one skilled in the art would have used mechanical energy, in addition to the photonic energy, so as to enhance treatment of the skin."

Response To Arguments

3. The Examiner states: "Applicant's arguments filed on October 26, 2005, have been fully considered but they are not persuasive. The applicant makes the following arguments:

i. The applicant argues that the prior art of record fails provide a motivation or suggestion to combine the references and therefore fails to teach a prima facie case of obviousness. In response to this argument, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. In re Keller, 642 F. 2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In this regard, a conclusion of obviousness may be based on common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference. In re Bozek, 416 F .2d 1385, 1390, 163 USPO 545, 549 (CCPA 1969).

ii. The applicant further argues that the prior art of record, Rodgers et al. in particular, fails to teach a method of treating photo-damaged skin, such as wrinkles. The applicant further argues that Rodgers et al is directed to a method for treating a damaged, wound, lacerated and/or opened tissue.

In response to this argument, Rodgers et al clearly teach a method of treating a photo-damaged skin, the method comprising the step of directing a treatment light along a portion of the epidermis to heat an area of tissue beneath said portion (see col. 2, line 66

through col. 3, line 10)."

Conclusion

4. The Examiner states: "This action is made **FINAL**."

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AMENDMENTS TO CLAIMS

Please amend the claims as follows:

Claim 1 (currently amended) A method for treatment of skin comprising:
treating a subsurface layer of un-damaged skin with a source of electromagnetic energy
sufficient to cause stimulation of collagen biosynthesis without thermal damage to the epidermis, in
conjunction with applying a wound healing composition to the skin, thereby achieving improved
collagenesis in the skin.

Claim 2-5 (canceled)

Claim 6 (previously presented) The method of Claim 1 wherein the treatment is repeated
serially with more than one day between any successive treatments.

Claim 7 (currently amended) A method for treatment of acne scars in skin, comprising:
treating contiguous subsurface and surface layers of the skin with a source of electromagnetic
energy in order to stimulate collagen biosynthesis in the skin without thermal damage to the epidermis, in
conjunction with applying a wound healing promoter composition which enhances a healing response in
the skin, thereby improving the appearance of the acne scars.

Claim 8 (currently amended) A method for treatment of photodamaged skin, comprising:
treating the layer of skin with a source of electromagnetic energy which stimulates biosynthesis
of collagen without thermal damage to the epidermis, in conjunction with applying a wound healing
promoter composition to the skin which enhances a healing response, thereby improving the appearance
of the photodamaged skin.

Claim 9 (currently amended) A method for treatment of wrinkled skin, comprising:
treating the layer of wrinkled skin with a source of electromagnetic energy which stimulates biosynthesis of collagen without thermal damage to the epidermis, in conjunction with applying a wound healing promoter composition to the skin which enhances a healing response, thereby improving the appearance of the wrinkled skin.

Claim 10 (currently amended) A system for treatment of skin, comprising:
a source of electromagnetic energy which is sufficient to stimulate biosynthesis of collagen in the skin without thermal damage to the epidermis; and
a wound healing promoter composition which enhances a healing response in the skin to accelerate collagenesis therein, thereby resulting in improved appearance of skin.

Claim 11 (previously presented) A method for treatment of undamaged tissue comprising the following steps:
causing a subdermal stimulation of collagen biosynthesis without thermal damage to the epidermis using a source of electromagnetic energy; and
applying a wound healing promoter composition to the tissue, such that collagenesis, repair and healing improvement of tissue is accelerated.

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